

13. Section 1.65(a) of the Commission's Rules provides in pertinent part that

"whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate...."

As noted, the application initially only reported the existence of the JSA, and the amendment to the application declared that Dille and his father would not be involved in the day-to-day operation of the station. Thus, once Hicks/Indiana and Pathfinder agreed to arrangements which expanded Pathfinder's role beyond those specifically set forth in the JSA, Hicks/Indiana arguably should have reported those arrangements to the Commission. However, in light of Campbell's advice and the resultant understanding of Hicks, Watson and Dille that their arrangements would not result in an abdication of control by Hicks (Findings, ¶¶ 62-3), it must be concluded that Hicks/Indiana's failure to report the information was, at most, inadvertent and not the result of deceit. Moreover, considering that the *OSC* does not specify a Section 1.65 issue and the proceedings were not enlarged to include such an issue, it would not be appropriate to reach a conclusion on that issue.

## **ii. Dille**

14. The findings establish and it is therefore concluded that Dille did not misrepresent facts or lack candor in the application of Hicks/Indiana to acquire the license for WRBR(FM). Specifically, no misrepresentations occurred because the only representations Dille made relative to the application were literally true. Moreover, although Dille mistakenly failed to disclose material information in connection with his February 22, 1994, statement to the Commission, the omission was the result of an erroneous belief rather than deceit. Thus,

while the ultimate sanction of revocation is inappropriate, a forfeiture is warranted pursuant to Section 73.1015 of the Commission's Rules. See ¶ 66 of the *OSC*.

15. The only information in Hicks/Indiana's application in which Dille had any personal role was the statement he signed in response to a request by the staff for additional information. (Findings, ¶¶ 40, 50-5) In that statement, Dille affirmed first that he would not finance or guarantee the purchase of WRBR(FM) by Hicks/Indiana. Dille also promised that he would not be involved in the day-to-day operations of WRBR(FM). (Findings, ¶ 53)

16. At the outset, the parties note that the statement Dille signed was prepared by Alan Campbell, a former president of the Federal Communications Bar Association and an attorney with extensive experience before the Commission in connection with the processing of applications, including applications to assign licenses. Campbell had directly communicated with the staff person regarding the matter to be submitted.<sup>1</sup> That communication was brief and never reduced to writing by the staff. From his conversation with the staff, Campbell understood that the staff was concerned about the personal involvement of Dille and his father in the financing and operations of WRBR(FM). Campbell's records and the recollections of Campbell, Watson and Dille reflect that Campbell's conversation with Dille and Watson about the statement's subject matter was brief and made no particular impression upon any of the parties to the conversation. (Findings, ¶¶ 50-4)

---

<sup>1</sup> In this regard, although the statement prepared by Campbell differed slightly from the information contained in the cover letter sent to Hicks, which indicated a copy to Watson -- in that the letter advised that the Commission's staff had asked Dille to sign a statement that he would not finance the purchase of the station for his children -- there is no evidence that Campbell's letter or its contents were ever communicated to Dille.

17. At the time the statement was signed, Dille had not provided any money to Hicks either to fund Hicks' portion of the escrow or to pay Campbell's fee. (Findings, ¶¶ 36, 43) Moreover, Dille's testimony that he had no present intention to pay any portion of the money due Booth American or to guarantee such payment is credible in light of the seller financing that Booth American was contracted to provide. (Findings, ¶ 54) Indeed, at that time, the only guarantee which was to be provided was from Hicks and each of the Dille children for \$250,000 total, which represented less than one-half of the contract price for the station. (Findings, ¶ 35) At most, Dille intended to lend his children their proportionate shares should such loans be necessary to provide Hicks/Indiana with funds to pay Booth American. As Dille understood the situation from prior discussions with Peter Tannenwald, another lawyer well-versed in FCC matters, he could make such loans to his children consistent with the Commission's multiple ownership rules, and the statement he was signing did not preclude him from making any such loans. Consequently, Dille never even informed Campbell about the money he already contributed or his (Dille's) intentions in the event his children needed additional money to meet their commitments. (Findings, ¶ 54)

18. The evidence further indicates that Dille never made any commitment to, or had any agreement with, Hicks/Indiana to provide money. At the time of the statement and throughout the pendency of the application, Hicks and the Dille children were the only parties personally responsible for the escrow provided. (Findings, ¶ 36) Hicks was the person who paid Campbell's retainer and was the only person who signed the retainer agreement with Campbell's firm on behalf of Hicks/Indiana. (Findings, ¶ 43) Hicks, on behalf of Hicks/Indiana, was the only party responsible (and the ultimate signatory of) the promissory

note to Booth American, while Hicks and the Dille children ultimately were the only parties responsible for the guaranty to Booth American. Dille never made any personal commitments to Booth American, nor did he ever make, or cause to be made, any such commitments on behalf of Pathfinder or Truth. (Findings, ¶ 66)

19. Moreover, the weight of the evidence is that Dille also did not make any personal commitment to Hicks. Brown's December 1993 note to the file that Dille would hold Hicks harmless on the letter of credit and guaranty was not based on a communication from Dille. Rather, it resulted from telephone conversation with Hicks who simply told Brown not to worry about the letter of credit and guaranty. Dille, on the other hand, flatly denied having made any such commitment to Hicks. (Findings, ¶ 38) Further, although Hicks ultimately obtained indemnification protection via the Side Letter, the protection obtained differed materially from that suggested by Brown's note to the file. Specifically, in the Side Letter, the Dille children, as opposed to Dille himself, promised only to indemnify Hicks on the letter of credit. Thus, any failure to do so would have given Hicks a cause of action only against the Dille children, not against their father. More importantly, the Dille children's promise relative to the guaranty was only to pay their respective commitments to Booth American before Hicks paid his. Such a promise did not appreciably change the burden of the Dille children and, at most, reduced Hicks' commitment by only \$10,000 (out of possible exposure of \$127,500). (Findings, ¶¶ 35, 60)

20. The conflicts in testimony relative to the January 1994 Crystal board meeting do not alter the basic conclusion about the non-existence of Dille's commitment to Hicks and, thus, the truthfulness of Dille's statement to the Commission. Analysis of the three versions

of the meeting - Sackley's, Hicks' and Brown's - indicates that the issue of Hicks/Indiana's future funding was discussed. Moreover, Dille's role as a possible source of funds was also mentioned. (Findings, ¶¶ 46-8) However, the minutes of the meeting are absolutely silent about Dille or the financing of WRBR(FM). (Findings, ¶ 49) It thus appears that Hicks' comments regarding Dille's commitment to fund the operations of the station were ultimately perceived as Hicks had testified; namely, a sarcastic reaction by Hicks to a caustic comment and not a concession to the accuracy of the premise that a commitment from Dille actually existed. (Findings, ¶ 47)

21. When payments to Booth American were due, Watson specifically sought and obtained funds from Hicks and the Dille children. Generally, Hicks and the Dille children made *pro rata* contributions to Hicks/Indiana. Further, beginning June 1996, funding for note payments came either from station operations or from a line of credit obtained by Hicks. No Pathfinder funds were ever used directly to pay Booth American. (Findings, ¶¶ 99-100)

22. Notwithstanding the foregoing, it could be argued that Pathfinder's and Truth's provision of interest-free funding to the operations of Hicks/Indiana is contrary to the representation Dille made to the Commission that he would not finance the purchase of WRBR(FM). However, the weight of the evidence suggests otherwise. At the outset, Hicks expected that station revenues would be sufficient to fund station operations. (Findings, ¶ 89) This expectation was not unreasonable on its face given the station's modest personnel costs and the savings likely to occur from joint operations with WLTA(FM). (Findings, ¶ 67) Consistent with this expectation, the 1994 budget prepared by Hicks and Kline for WRBR(FM) projected a positive cash flow for all but the month of May. (Findings, ¶¶ 97-8)

Moreover, Watson's March 4 memo and the related accounting agreement did not commit Dille, Pathfinder or Truth to fund Hicks/Indiana in any way, and Dille never thought of the Hicks/Indiana receivable as a form of financing the WRBR(FM) acquisition or as inconsistent with his February 1994 statement to the Commission. (Findings, ¶¶ 62, 64, 91, 93, 95) Thus, it does not appear that the funding which Pathfinder provided occurred as a result of any plan which arose during the pendency of the Hicks/Indiana application or resulted from a conscious effort by Dille or Hicks to evade the effect of Dille's promise to the Commission that he would not finance the acquisition of WRBR(FM) by Hicks/Indiana.

23. Even though the evidence establishes the literal truth of Dille's statement to the extent that he did not directly finance or guarantee the purchase of the station, the evidence also shows that Dille provided, and had intended to provide, all the funds which his children had been and might be obligated to provide Hicks/Indiana. In this regard, Dille and Watson knew that Dille had supplied the entirety of the escrow provided by the Dille children to Booth American, and Dille knew that, as of the date of his statement, he would further furnish his children with whatever funds they needed to meet their commitments. (Findings, ¶¶ 36, 54) As events unfolded, Dille did, in fact, provide nearly \$120,000 toward the payment of the Booth American note. (Findings, ¶ 99) Dille neither disclosed his actions nor his intentions to the Commission. Instead, he left unmodified a statement prepared by Campbell, who was unaware of Dille's financial actions and plans. Consequently, the statement, which clearly implied that Dille would have *no* role in financing the purchase of the station, gave a false impression about Dille's actions and imparted no hint about his intentions. (Findings, ¶¶ 52-3) However, considering the advice Dille received from Tannenwald that provision of

funds from a parent to a child was permissible, Dille's belief that his statement did not preclude him from loaning or giving money to his children was not unreasonable on its face. (Findings, ¶¶ 36, 54) In sum, the evidence supports a conclusion that although Dille's statement omitted material information that would have ensured that the Commission understood Dille's precise role in providing funds used to purchase WRBR(FM), the omission, though willful, was a mistake and not occasioned by an intent to deceive. Accordingly, a forfeiture, not revocation, is warranted. See *Abacus Broadcasting Corp.*, 8 FCC Rcd at 5114-5.

24. With respect to Dille's promise that he would not be involved in the day-to-day operations of WRBR(FM), the evidence again establishes that the promise was literally true. Other than sales matters which fell under Pathfinder's purview pursuant to the JSA, there is no evidence that Dille himself had or took any role in the operations of the station. At Campbell's suggestion, Dille specifically informed Kline that he (Dille) did not want to be involved in WRBR(FM)'s operations, and Dille subsequently honored that commitment by avoiding any involvement in decisions concerning the station's personnel, programming and finances. (Findings, ¶¶ 65, 86, 97)

25. Moreover, it cannot be concluded that Dille willfully or deceitfully omitted material information from his statement regarding his and his father's non-involvement. In this regard, the proposals concerning Kline and Pathfinder's expanded role at WRBR(FM) were not settled until sometime after the date of Dille's statement. Moreover, Campbell basically informed Watson that Watson's proposals regarding Pathfinder's role would not run afoul of the Commission's dictates concerning control of the station. (Findings, ¶ 62) Thus,

it cannot be concluded that Dille lacked candor by failing to describe Pathfinder's ultimate role.

**B. Real Party-in-Interest/De Facto Control**

26. Section 310(d) of the Act states, in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

47 U.S.C. § 310(d); *see also* 47 C.F.R. § 73.3540(a)(implementing the statutory provisions of Section 310(d) and prohibiting the voluntary assignment or transfer of control of a broadcast permit or license without prior Commission consent).

27. Although there is no formula for evaluating whether a party is in *de facto*, or actual, control, *see, e.g., Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975), *modified*, 59 FCC 2d 1002 (1976), the Commission traditionally looks to whether a new entity has obtained the right to determine the basic operating policies of the station, that is, to affect decisions concerning the personnel, programming or finances of the station. *See WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). A licensee may delegate certain functions on a day-to-day basis to an agent or employee, *e.g., Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981), but such delegation cannot be wholesale. That is, those persons assigned a task must be guided by policies set by the permittee or licensee. *See David A. Davila*, 6 FCC Rcd 2897, 2899 (1991). Further, while joint sales agreements between



licensees in the same market are permissible, each licensee must retain control of its own station and comply with the Communications Act and the Commission's rules and policies. *Radio Revision*, 7 FCC Rcd at 2787. The Commission evaluates real party in interest questions as it does questions concerning *de facto* control of a permittee or licensee. *Univision Holdings*, 7 FCC Rcd 6672, 6675 (1992), recon. denied, 8 FCC Rcd 3931 (1993).

28. The evidence indicates that neither Pathfinder nor any of its agents were real parties-in-interest in the Hicks/Indiana application when it was filed. Although Pathfinder, through Dille and Watson, had negotiated the basic terms of the APA with Booth American and remained involved on behalf of the Dille children throughout the negotiations with Booth American, Hicks' attorney, Brown, clearly had a significant and active role in the final negotiations leading up to the execution of the APA. (Findings, ¶¶ 12, 20, 23, 28, 32-4) Moreover, Hicks, on behalf of Hicks/Indiana, executed the APA and obtained the letter of credit to fund his share of the escrow. The letter of credit and the personal guaranty required of Hicks exposed him to a substantial financial loss in proportion to his interest in the applicant. (Findings, ¶¶ 34-6) Hicks completed the principal parts of the assignment application. He retained Campbell as special communications counsel and paid his retainer. He executed the various certifications in the application. Dille had no role in the preparation of the application, and Watson's role was limited to providing information about the interests of the Dille children in Pathfinder and Truth. (Findings, ¶¶ 39-40) It thus appears that Hicks had adequate control of the applicant at least until March 1994.

29. However, the evidence further reflects that, beginning in March 1994, Hicks and Pathfinder began to put into place a series of joint operational elements that had the

unintended effect of ceding control of WRBR(FM) to Pathfinder. Shortly after or concurrent with the submission of Dille's statement of no involvement with WRBR(FM), Hicks, Dille, Watson and Campbell discussed and ultimately agreed to arrangements which expanded Pathfinder's role well beyond that established in the JSA. (Findings, ¶¶ 7-8, 62-5, 90) As a consequence of the March 1994 arrangements, operational control of WRBR(FM) would rest with Kline, who was to serve as the station's general manager as well as the general manager of WLTA(FM). In addition, by virtue of the accounting agreement and the fact that Hicks/Indiana did not maintain its own bank account, Pathfinder had the opportunity to exercise inappropriate control over Hicks/Indiana's funds. Finally, all employees providing services to WRBR(FM) were going to be paid from Pathfinder's payroll whether or not the employees devoted all or merely part of their work day to that station. (Findings, ¶¶ 62, 64, 68, 70, 91) The only restrictions imposed on Pathfinder were personal to Dille. As Dille understood the restrictions, he was not precluded from lending money to his children. Also, Dille did not consider whether Pathfinder was affected by those restrictions inasmuch as it had already been reported to the Commission that Pathfinder was involved in WRBR(FM)'s sales pursuant to the JSA. (Findings, ¶¶ 53-4, 65)

30. Shortly after the application's grant, shareholder agreements further reduced the influence Hicks might otherwise hold as majority shareholder of Hicks/Indiana. Specifically, Hicks gave the Dille children the right to buy his stock *at any time* without obtaining a reciprocal right to buy theirs. Hicks' choice in this regard must be contrasted with the rights he held vis-a-vis Sackley, the primary shareholder in Crystal. For example, in the Crystal situation, if Sackley offered to buy out Hicks, Hicks, in turn, had the right to buy out all the

other Crystal shareholders, including Sackley, at Sackley's offering price. (Findings, ¶¶ 58-9) In addition, Hicks, at Brown's initiative, continued to focus on how to leave the investment and reduce his financial exposure. As a consequence of the Side Letter, Hicks obtained a right to put all of his shares to the Dille children at any time after three years, a promise that the Dille children would hold him harmless from any costs arising from the letter of credit, and a promise from the Dille children that they would pay their part of the guaranty before he would have to pay anything. (Findings, ¶¶ 60-1) Taken in combination, the March memo, the accounting agreement, the Operating Agreement and the Side Letter left Hicks with virtually no employees and minimal investment in, or incentive to stay involved with, WRBR(FM).

**31.** The passive role envisioned for Hicks at the outset of Hicks/Indiana's acquisition of the WRBR(FM) license dovetails perfectly with his then existing responsibilities relative to Crystal. Hicks was a director and officer of Crystal, employed full time as director of sales for Crystal's three stations in Kalamazoo, Michigan, and was personally responsible (along with Sackley) for several million dollars of bank debt. (Findings, ¶¶ 15, 24, 26, 78) Clearly, when Hicks/Indiana became licensee, Hicks' focus was going to be directed toward Kalamazoo, not South Bend. Moreover, even after his termination from Crystal, Hicks did not become involved on a full-time basis with WRBR(FM). Rather, he became an employee of Dille/Pathfinder, first in the fledgling Sign Pro business, then in national sales for all of Pathfinder's radio stations (as well as for WRBR(FM)) and finally as general manager of three Pathfinder stations in Grand Rapids. (Findings, ¶¶ 79-82) Only after the sale of all of Pathfinder's Grand Rapids properties, was Hicks in a position to devote his full time and

attention to WRBR(FM). In any event, as the following demonstrates, Pathfinder has had and will continue to have a role which is at odds with Hicks/Indiana being licensee of WRBR(FM).

**32. Personnel.** Kline, WRBR(FM)'s only general manager under Hicks/Indiana, also was and remains a Pathfinder employee.<sup>2</sup> (Findings, ¶¶ 68-9) WRBR(FM)'s news directors, sports director and program directors also have been or became Pathfinder employees and have nearly always had dual roles at both WBYT(FM) and WRBR(FM). (Findings, ¶¶ 71-5) Likewise, the operations manager, continuity director, events coordinator and general sales manager for WRBR(FM) have always been Pathfinder employees. (Findings, ¶¶ 76-7) Moreover, the only person that Hicks claims to have hired (other than Kline) - Henning as program director - apparently also worked as a contract engineer for Pathfinder. (Findings, ¶ 73) Further, the fact that Hicks receives a salary from Hicks/Indiana for his contributions to WRBR(FM) and communicates with the station's program director, Joe Turner, on a regular basis, is not dispositive given Kline's continued presence. (Findings, ¶¶ 75, 82-3, 87) Finally, every employee working for WRBR(FM), either partially or exclusively, is on Pathfinder's payroll and subject to Pathfinder's personnel policies. (Findings, ¶ 70)

**33. Programming.** From April 1, 1994 until late 1995, the evidence is inconclusive as

---

<sup>2</sup> In this regard, even though Hicks/Indiana has paid one half of Kline's salary, it is by no means clear that it has had half of Kline's attention, time and effort. Two examples will suffice. First, Kline made Britain program director of both WBYT(FM) and WRBR(FM) (and charged Hicks/Indiana accordingly) and kept him in that position *for more than a year* even though Hicks testified he viewed Henning as his program contact during that period. (Findings, ¶¶ 73-5) Second, Hicks apparently made so little an impression on Kline that, during a 1995 deposition, Kline connected his first meeting with Hicks to Sign Pro, not WRBR(FM). (Findings, ¶ 68)

to what part Hicks actually played in determining WRBR(FM)'s entertainment programming. In this regard, although Moore testified that he and Hicks had discussed whether to continue the oldies format and had periodically met, the documentary evidence reflects no involvement by Hicks until early 1996, except as a signatory of documents forwarded to him by Watson. (Findings, ¶¶ 84-5) Even then, Moore chose to address his January 1996 memo about WRBR(FM) to Hicks and Federated Media. (Findings, ¶ 86) Had Hicks/Indiana been truly independent, there would have been *no* reason for Moore to have addressed his memo to Federated Media. Moreover, Moore's next memo, addressed only to Kline, Joe Turner and Hicks, candidly appraised WRBR(FM)'s oldies format as a viable complement to Pathfinder's WBYT(FM). However, the evidence also clearly shows that Hicks played a significant role in the acquisition of the Bob and Tom Show and the concurrent format change. In addition, Hicks has played and continues to play a significant role in the entertainment programming of WRBR(FM). (Findings, ¶ 87) Thus, Hicks now has apparent control over the entertainment programming of the station.

34. With respect to non-entertainment programming, however, Hicks has been virtually invisible. From the beginning, WRBR(FM)'s news and public affairs programming has been edited and delivered by Pathfinder employees. Hicks/Indiana's only role in their activities is to pay a portion of their salaries. (Findings, ¶¶ 71, 88)

35. Finances. As a consequence of the JSA, the Watson memo and the accounting agreement, Pathfinder has served as Hicks/Indiana's principal accountant. (Findings, ¶¶ 62, 64, 91) In this role, Pathfinder has faithfully prepared and sent to Hicks weekly sales reports, monthly financial reports and general ledgers. Hicks has reviewed and, to varying degrees,

commented on these materials. (Findings, ¶¶ 80, 91-2, 110) Hicks has also received on a regular basis most attorneys bills (except those of Barnes & Thornburg) and a variety of invoices. (Findings, ¶¶ 80, 103-5, 107, 109) Further, Hicks has reviewed every budget prepared for WRBR(FM). (Findings, ¶ 97) Beginning in late 1996, Hicks has clearly directed the station's capital budget. (Findings, ¶ 111) The foregoing shows that Hicks is and has been fully informed about WRBR(FM)'s finances.

36. However, the evidence demonstrates that, prior to April 1997, Hicks was not in control of Hicks/Indiana's financial affairs. Until April 1997, Hicks/Indiana had no bank account of its own. Consequently, until that time, it was not in a position to receive interest on its funds (which totalled more than \$100,000 in 1996) which were regularly swept into a Pathfinder interest bearing account. As of now, most, but not all, of Hicks/Indiana's funds immediately find their way into the Hicks/Indiana account. The remainder stay in the Pathfinder account until paid to Hicks/Indiana pursuant to the amendment to the JSA.. (Findings, ¶¶ 91, 93-4)

37. Prior to 1997, whenever Hicks/Indiana was struggling financially, Hicks did not seek bank financing or contributions from his fellow shareholders. Indeed, Hicks did nothing. Rather, Pathfinder simply paid Hicks/Indiana's bills and treated the resulting debt as a receivable, notwithstanding that Hicks/Indiana was not in any way like a Pathfinder advertiser. In this regard, Pathfinder treated WRBR(FM)'s bills just as it would have treated any other station controlled by Dille.<sup>3</sup> (Findings, ¶¶ 93, 95, 98) This situation has been ameliorated

---

<sup>3</sup> Such treatment includes the payments of attorney bills. With respect to Brown's bill, Dille negotiated the final amount due at Hicks' request. With respect to other bills, Watson had the final say as to when and how much of a bill is paid. (Findings, ¶¶ 103-5)

somewhat since, beginning in 1997, Hicks/Indiana has its own line of credit from which it paid off the Booth American note and which it pays down from its own account. (Findings, ¶¶ 100, 102)

38. The decisions to obtain money from shareholders in 1994 and 1995 and how to treat the money sent - whether as loans or capital contributions - were made in the first instance by Pathfinder. In this regard, Watson initiated the memos to Hicks and the Dille children, which requested funds necessary to pay Booth American, and Watson suggested whether monies contributed should be classified as capital contributions or loans. Hicks' role in this process was passive, at best. Likewise, Watson was the person who initiated the preparation of promissory notes, who proposed the interest rate for the repayment of funds advanced, and who initiated repayment. Again, Hicks' role appears to have been passive. (Findings, ¶¶ 96, 99-101)

39. Although Hicks has reviewed WRBR(FM)'s basic expenses in the course of establishing station budgets, Pathfinder personnel have made the day-to-day allocations of costs for WRBR(FM). Kline, together with Richard Rhodes, his counterpart at Pathfinder's WTRC(AM), Elkhart, have allocated salaries and costs among and between WTRC, WBYT(FM) and WRBR(FM) with no visible input from Hicks. (Findings, ¶¶ 71-6)

Occasionally, those allocations - such as the ones for Britain and Joe Turner - favored Pathfinder over Hicks/Indiana in that the latter paid for more than its share of those employees' compensation given the time they spent on WRBR(FM) affairs. (Findings, ¶ 74-5)

Additional disparities include Kline's compensation (shared evenly between Pathfinder and Hicks/Indiana) and the rent (where Pathfinder has charged Hicks/Indiana 50% of the cost of

its shared premises) because WRBR(FM) has always had a smaller number of employees.<sup>4</sup> (Findings, ¶¶ 67, 69) Finally, Pathfinder allocated 50% of Hicks' compensation to Hicks/Indiana during periods when Hicks spent far more than half his time on Pathfinder business. While Hicks apparently agreed with the allocation, the evidence reflects that Pathfinder took the initiative in effecting the allocation. (Findings, ¶¶ 81-2) The point is not that Pathfinder took advantage of its position vis-a-vis Hicks/Indiana but that it had the ability to do so.

40. In sum, with respect to finances, Pathfinder's role was and still is pervasive. It is not and never has been a mere accountant. Pathfinder has controlled the sole account which served and still serves as Hicks/Indiana's main repository of funds and primary source of funds for the payment of WRBR(FM)'s bills. Pathfinder personnel, principally Watson and his subordinates, have initiated all significant financial actions taken by Hicks/Indiana. While Hicks has taken a more active role since late 1996, WRBR(FM)'s finances are still affected by the decisions of Pathfinder.

41. Considering the totality of the evidence, it should be concluded that Pathfinder and its agents acquired the ability to control WRBR(FM) immediately before Hicks/Indiana became licensee of the station. Moreover, because Pathfinder has continued to have impermissible control over the operations of WRBR(FM), it should also be concluded that Hicks abdicated control of Hicks/Indiana and that Pathfinder acquired control contrary to Section 310 of the Act. *See Roy M. Speer*, 11 FCC Rcd 18393, 18415 (1996).

---

<sup>4</sup> In this regard, Pathfinder has always been the employer of all WBYT(FM) and WRBR(FM) sales personnel and support staff pursuant to the JSA. (Findings, ¶ 77)



### **C. Multiple Ownership**

**42.** Section 73.3555(d)(2) of the Commission's Rules provides:

(d) Daily newspaper cross-ownership rule. No license for an ... FM ... broadcast station shall be granted to any party (including all parties under common control) if such party directly owns, operates or controls a daily newspaper and the grant of such license will result in:

...

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published.

The findings show that Truth publishes the *Elkhart Truth*, a daily newspaper in Elkhart, and that WRBR(FM) encompasses the entire community of Elkhart, Indiana. (Findings, ¶ 13) The evidence further shows that Truth and Pathfinder are controlled by common parties, including Dille and Watson. (Findings, ¶¶ 6, 11, 13) Finally, as explained above, the evidence shows that Pathfinder, not Hicks/Indiana, has controlled WRBR(FM). Inasmuch as Pathfinder has never obtained a waiver to operate or control WRBR(FM), it should be concluded that from April 1, 1994, to the present, Pathfinder has operated and/or controlled WRBR(FM) in violation of Section 73.3555(d)(2) of the Commission's Rules.

### **D. Ultimate Conclusions**

**43.** As reflected above, neither Hicks/Indiana nor Pathfinder misrepresented facts or lacked candor. However, Pathfinder, through its agent, Dille, omitted material information from a statement submitted to the Commission in connection with Hicks/Indiana's application to acquire WRBR(FM), in violation of Section 73.1015 of the Commission's Rules. Further, Hicks/Indiana and Pathfinder each violated Section 310 of the Act by abdicating and acquiring control, respectively, of WRBR(FM) without approval of the Commission. Finally,

Pathfinder's control of WRBR(FM) was in violation of Section 73.3555(d)(2) of the Commission's Rules. Inasmuch as the foregoing violations resulted from mistake rather than deceit, the ultimate sanction of revocation is not appropriate. See *Roy M. Speer*, 11 FCC Rcd at 18428. However, as discussed below, forfeitures are warranted.

44. Section 503(b) of the Communications Act provides for the imposition of forfeitures for willful and/or repeated violations of the Communications Act and/or the Commission's rules. As discussed above, the violations were willful. The parties knew what they were doing even though they did not intend to violate the law. See *Abacus Broadcasting Corp.*, 8 FCC Rcd at 5115. In this regard, the fact that the parties consulted with their attorneys and formed a good faith belief that they were not trespassing Commission rules does not absolve them of these violations. Further, with respect to the violations related to Pathfinder's illegal control of WRBR(FM), the violations were continuous and, therefore, repeated. After considering the violations in light of case precedent,<sup>5</sup> the forfeiture guidelines,<sup>6</sup> and the factors enumerated in Section 503(b) of the Act, it is recommended that Hicks/Indiana be ordered to pay a forfeiture of \$20,000 for the Section 310(d) violation, while Pathfinder be ordered to pay a total forfeiture of \$30,000 (\$10,000 for the Section 73.1015 violation and \$20,000 for the Section 310(d) violation and the Section 73.3555(d)(2)

---

<sup>5</sup> In this regard, the Bureau considers *Abacus Broadcasting Corp.*, 8 FCC Rcd 5110 (Rev. Bd. 1993), as appropriate precedent for the forfeiture amount recommended for the violation of Section 73.1015 of the Commission's Rules. For the violations of Section 310(d) of the Act and Section 73.3555(d)(2) of the Commission's Rules, the Bureau considers *Roy M. Speer*, 11 FCC Rcd 18393 (1996), *American Radio Systems Corporation*, 13 FCC Rcd 9588 (MMB 1998) and *Palm Beach Radio Broadcasting, Inc.*, 13 FCC Rcd 9593 (MMB 1998), to be appropriate precedent.

<sup>6</sup> *Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997).

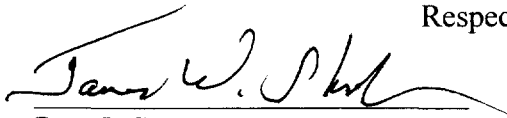
violation). In this regard, the parties concur that the forfeiture liability for Dille's violation of Section 73.1015 of the rules appropriately falls upon Pathfinder in light of Dille's and Watson's knowledge concerning the source of the escrow funds provided by the Dille children and their involvement in the events leading up to Dille's execution of the February statement that was submitted to the Commission. (Findings, ¶¶ 36, 52)

45. It is further recommended that Hicks/Indiana and Pathfinder be ordered to take such steps as deemed appropriate to avoid future violations of Section 310(d) of the Act and Section 73.3555(d)(2) of the Commission's Rules. Such steps should include some or all of the following: 1) the employment by Hicks/Indiana of a WRBR(FM) general manager who is not subject in any way to the authority of Pathfinder; 2) the disbursement of all revenues generated by the JSA to Hicks/Indiana in accordance with the JSA; and 3) the payment of all non-JSA bills, invoices, obligations, etc. from an account maintained solely by Hicks/Indiana. See *Roy M. Speer*, 11 FCC Rcd at 18430-4; *Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8523 (1995) (subsequent history omitted). Lastly, it is recommended that the prohibition on Pathfinder's right to assign, transfer and acquire additional licenses be lifted upon finality of the Initial Decision in this proceeding. See *OSC*, ¶ 53.

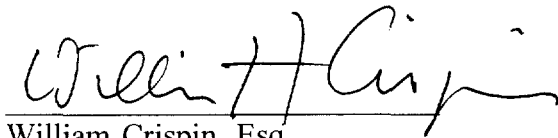
46. In sum, notwithstanding the statutory and rule violations described above, it

should be concluded that Hicks/Indiana and Pathfinder are qualified to remain Commission licensees.

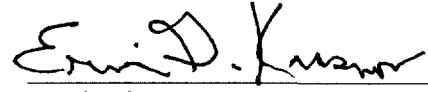
Respectfully submitted,



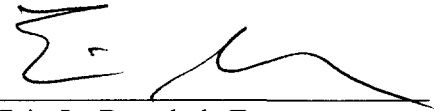
Roy J. Stewart,  
Chief, Mass Media Bureau  
Norman Goldstein  
Chief, Complaints and Political Programming Branch  
James W. Shook  
Roy W. Boyce  
Kathryn S. Berthot  
Attorneys, Mass Media Bureau



William Crispin, Esq.  
Dean Brenner, Esq.  
Crispin & Brenner, PLLC  
Attorneys for Niles Broadcasting, Inc.



Erwin G. Krasnow, Esq.  
Douglas W. Hall, Esq.  
Eric T. Werner, Esq.  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
Attorneys for Hicks Broadcasting of  
Indiana, LLC



Eric L. Bernthal, Esq.  
Everett C. Johnson, Jr., Esq.  
Michael J. Guzman, Esq.  
Allen M. Gardner, Esq.  
Latham & Watkins  
Attorneys for Pathfinder  
Communications Corp.